



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/164113

PRELIMINARY RECITALS

Pursuant to a petition filed February 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 02, 2015, at Neenah, Wisconsin.

The issue for determination is whether the agency correctly discontinued petitioner's FS effective March 1, 2015 due to being over the income limit.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeanie Ortiz

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County and has been a recipient of FS.

2. On January 27, 2015 the agency processed petitioner's six month review form (SMRF). It determined petitioner's gross monthly income to be \$4458.34.
3. On February 16, 2015 the agency issued a notice to petitioner stating that her FS would be closing March 1, 2015 due to being over the income limit for a household of four.

DISCUSSION

Food stamp eligibility is determined in part by income. A prospective (rather than retrospective) budgeting system is typically used in the FS program. 7 C.F.R. 273.10(c); 7 C.F.R. 273.21(a); *BWI Operations Memo*, 97-58 (issued June 25, 1997). The Wisconsin policy instruction to county agencies is reasonably consistent with the federal regulation:

4.3.3.5.3 Worksheets

To calculate self-employment income, use the self-employment income worksheets to adjust the income figure on the IRS tax forms. The worksheets identify net income and depreciation. Add back in depreciation on the IRS form as indicated on the worksheet.

...

Disallowed Expenses

Some specific expenses that are not allowed in the calculation of Self Employment Income for FoodShare are:

Depreciation

Net loss carryover from previous periods

Federal, State, and local income taxes

Charitable donations

Work-related personal expenses, such as transportation to and from work

Employer work-related personal expenses such as pensions, employee benefit and retirement programs and/or profit sharing expenses (Business expenses for employees' pensions, benefits, retirement programs, and profit sharing expenses are allowable, but the work-related personal expenses of the employer are not).

Amortization

Next, divide self-employment income by the number of months the business was in operation, including partial months, during the previous tax year. The result is monthly income. Add this to the food unit's other earned. If monthly income is a loss, add zero to the income....

FS Handbook, §4.3.3.5, viewable online at <http://www.emhandbooks.wi.gov/fsh/>.

The agency was correct to use the tax return, in accord with the federal regulation and state policy, to compute the household's income for FS purposes and to add back in the depreciation from the self-employment income. The federal rule is very clear in requiring that deducted depreciation must be added back into a household's income for FS purposes. See 7 C.F.R. §273.11(b). Petitioner has identified no issued in the computations of that income. As such, I must find that the agency correctly calculated the income.

The FS group is not categorically eligible if any member of its food unit loses FS eligibility because s/he has a total gross income above 200% FPL. *FS Handbook* §4.2.1.1. The gross monthly income was calculated as \$4458.34. The gross income limit for a household of four is \$3976. *FS Handbook* §8.1.1. The petitioner is also over the net income limit of \$1,988, as her net income was calculated to be

\$2976.88. *Id.*; see also Exhibit 4. Thus, I must find that the petitioner is over the income limit for her household of four.

Administrative law judges do not have the authority to bypass clearly stated law and policy. Therefore, petitioner's appeal must be dismissed.

CONCLUSIONS OF LAW

The agency correctly discontinued petitioner's FS effective March 1, 2015 due to being over the income limit.

THEREFORE, it is **ORDERED**

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

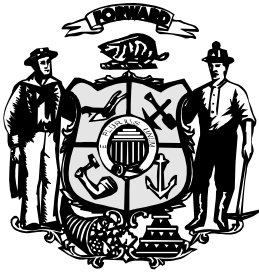
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one). The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of April, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 16, 2015.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability